

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:NER:MAN:TL-N-4589-00  
JSRubinstein

date:

to: Area Manager/Director, Manhattan  
Attention, Mitch Halper (Territory 4-4)

from: District Counsel, Manhattan

subject: [REDACTED]  
Form SS-10- Tax Years [REDACTED] through [REDACTED]  
[REDACTED]  
Form SS-10- Tax Years [REDACTED] through [REDACTED]  
[REDACTED]  
Form SS-10- Tax Years [REDACTED] through [REDACTED]  
[REDACTED]  
Form SS-10- Tax Years [REDACTED] through [REDACTED]  
[REDACTED]  
Form SS-10- Tax Years [REDACTED] through [REDACTED]  
Consent to Extend the Statute of Limitations on Assessment

Statute of Limitations Expires [REDACTED]

UIL Nos. 6501.08-00  
6501.08-10  
6501.08-17

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This memorandum responds to your request for written advice concerning the appropriate language for a Form SS-10, Consent to Extend the Time to Assess Employment Taxes, in connection with the federal employment tax returns of the above named companies.

The advice given below is subject to post review by the Chief Counsel's National Office. Therefore, we ask that you wait ten working days from the date of this memorandum, or until you earlier hear of approval, before acting on this advice.

### Issues

1. What specific language should be used on the Form SS-10 for [REDACTED] through [REDACTED] employment tax liability? [REDACTED] has changed its name to [REDACTED] on [REDACTED] but still retains the EIN [REDACTED].

2. What specific language should be used on the Form SS-10 for [REDACTED]'s [REDACTED] through [REDACTED] employment tax liability? [REDACTED] changed its name on [REDACTED] to [REDACTED] but it still retains EIN [REDACTED].

3. What specific language should be used on the Form SS-10 for [REDACTED]'s [REDACTED] through [REDACTED] employment tax liability? [REDACTED] continues to exist and still retains EIN [REDACTED].

4. What specific language should be used on the Form SS-10 for [REDACTED] through [REDACTED] employment tax liability? [REDACTED] was merged into [REDACTED] (formerly [REDACTED]) on [REDACTED].

5. What specific language should be used on the Form SS-10 for [REDACTED] through [REDACTED] employment tax liability? [REDACTED] was merged into [REDACTED] (formerly [REDACTED]) on [REDACTED].

### Facts

During [REDACTED] through [REDACTED] the above-captioned companies were members of the [REDACTED] consolidated group. In [REDACTED] the Manhattan District commenced its examination of the employment tax liability for each company.

During [REDACTED] and subsidiaries were acquired by [REDACTED] and [REDACTED] resulting in a restructuring of the [REDACTED] group of companies.

[REDACTED] is a Delaware corporation wholly owned by [REDACTED]. On [REDACTED], the Board of Directors of [REDACTED] adopted the Amended and Restated Certificate of Incorporation that was filed with the Secretary of State of the State of Delaware pursuant to Section 228, Section 242 and Section 245 of the Delaware General Corporation Law, changing its name from [REDACTED] to [REDACTED]. The Restated Certificate of Incorporation was filed with the Office of the Secretary of State of the State of Delaware on [REDACTED].

[REDACTED] is a Delaware corporation wholly owned by [REDACTED]. Pursuant to Section 228(a) of the Delaware General Corporation Law, the Board of the Directors of [REDACTED] approved the Certificate of Amendment of Certificate of Incorporation of [REDACTED] providing for the change of the corporation's name to [REDACTED] on [REDACTED].

[REDACTED] is a Delaware corporation wholly owned by [REDACTED]. On [REDACTED], a Certificate of Merger of [REDACTED] with and into [REDACTED] (formerly [REDACTED]), a Delaware corporation (and also a wholly owned subsidiary of [REDACTED]), was filed with the Secretary of State of the State of Delaware pursuant to Section 251(c) of the Delaware General Corporation Law.

[REDACTED] is a New York corporation and was a wholly owned subsidiary of [REDACTED]. [REDACTED] was a wholly owned subsidiary of [REDACTED]. On [REDACTED], [REDACTED] was merged into [REDACTED], a Delaware corporation, (formerly [REDACTED]). [REDACTED] is also a wholly owned subsidiary of [REDACTED].

On [REDACTED], a Certificate of Ownership and Merger of [REDACTED], with and into [REDACTED] was filed with the Secretary of State of the State of Delaware pursuant to Section 253(a) of the Delaware General Corporation Law and with the Secretary of State of the State of New York under section 907 of the New York Business Corporation Law. Pursuant to the plan of merger [REDACTED] merged with and into [REDACTED] emerged as the surviving corporation.

#### Discussion

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document these actions in the case file.

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For employment taxes, the form used by the Service to extend the limitations period on assessment is Form SS-10 (Consent to Extend the Time to Assess Employment Taxes).

Unlike the income tax liability of a consolidated group, where, as a general rule, the common parent acts as sole agent for each member of the group, each member of a consolidated group must act on its own behalf with respect its own employment tax liabilities. See I.R.C. § 1501 and the regulations thereunder. Each member is, therefore, responsible for entering into its own consent to extend the statute of limitations with respect to its employment tax liabilities.

The Forms SS-10 should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act on behalf of [REDACTED]. See Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

Issue 1. What specific language should be used on the Form SS-10 for [REDACTED] through [REDACTED] employment tax liability? [REDACTED] has changed its name to [REDACTED] on [REDACTED] but still retains the EIN [REDACTED].

The caption of the Form SS-10 extending the statute of limitations for [REDACTED] employment tax liability for the [REDACTED] through [REDACTED] taxable years should read as follows:

"[REDACTED] (EIN [REDACTED]) (formerly [REDACTED])"

The EIN of [REDACTED] (EIN [REDACTED]) should be entered in the upper right hand corner of the Form SS-10.

Issue 2. What specific language should be used on the Form SS-10 for [REDACTED]'s [REDACTED] through [REDACTED] employment tax liability? [REDACTED] changed its name on [REDACTED] to [REDACTED] but it still retains EIN [REDACTED].

The caption of the Form SS-10 extending the statute of limitations for [REDACTED]'s employment tax liability for the [REDACTED] through [REDACTED] taxable years should read as follows:

"[REDACTED] (EIN [REDACTED]) (formerly [REDACTED])"

The EIN of [REDACTED] (EIN [REDACTED]) should be entered in the upper right hand corner of the Form SS-10.

Issue 3. What specific language should be used on the Form SS-10 for [REDACTED]'s [REDACTED] through [REDACTED] employment tax liability? [REDACTED] continues to exist and still retains EIN [REDACTED].

The Form SS-10 for [REDACTED] does not require special caption or language. Therefore, the caption of the Form SS-10 extending the statute of limitations for [REDACTED]

█ should simply read as follows:

"█ (EIN █)"

Issue 4. What specific language should be used on the Form SS-10 for █ through █ employment tax liability? █ was merged into █ (formerly █) on █.

In the case of merged corporations the surviving or resulting corporation in a merger under state law may validly sign an extension agreement on behalf of the transferor (predecessor) corporation for a period before the transfer. Rev. Rul. 59-399, 1959-2 C.B. 499; See also Popular Library Inc. v. Commissioner, 39 T.C. 1092 (1963); Union Bleachery v. Commissioner, 97 F.2d 226 (4<sup>th</sup> Cir. 1938).

In the subject case, both █ and █ are Delaware corporations and merged in accordance with Delaware law. Pursuant to Delaware law, "when any merger or consolidation shall have become effective...all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties have been incurred or contracted by it." Del. Code Ann., Title VIII, § 259(a) (1998).

Accordingly, the caption of the Form SS-10 extending the statute of limitations on assessment for █ through █ employment tax liability should read as follows:

"█ (EIN █) as successor in interest by merger to █ (EIN █)"

The EIN of █ (EIN █) should be entered in the upper right hand corner of the Form SS-10.

Issue 5. What specific language should be used on the Form SS-10 for █ through █ employment tax liability? █ was merged into █ (formerly █) on █.

In the case of merged corporations the surviving or resulting corporation in a merger under state law may validly sign an extension agreement on behalf of the transferor (predecessor)

corporation for a period before the transfer. Rev. Rul. 59-399, 1959-2 C.B. 499; See also Popular Library Inc. v. Commissioner, 39 T.C. 1092 (1963); Union Bleachery v. Commissioner, 97 F.2d 226 (4<sup>th</sup> Cir., 1938).

In the subject case, [REDACTED] is a New York corporation, and [REDACTED] is a Delaware corporation. These two corporations merged in accordance with the corporation laws of New York and Delaware. Pursuant to the law of New York, once a merger is effected, "[t]he surviving or consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent entities." N.Y. Bus. Corp. L. § 906(b)(3) (Consol. 1999). Similarly, pursuant to the law of Delaware, "when any merger or consolidation shall have become effective ... all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it." Del. Code Ann., Title VIII, § 259(a) (1998).

Accordingly, the caption of the Form SS-10 extending the statute of limitations on assessment for [REDACTED] through [REDACTED] employment tax liability should read as follows:

"[REDACTED] (EIN [REDACTED]) as successor in interest by merger to [REDACTED] (EIN [REDACTED])"

The EIN of [REDACTED] (EIN [REDACTED]) should be entered in the upper right hand corner of the Form SS-10.

Should you have any questions regarding this matter, please contact Jody Rubinstein at (212)264-1595, extension 235.

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